IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 872 OF 2007

Gajanan Shankar Khapne ...Petitioner
V/s.
The Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.Madhav J. Jamdar for the Petitioner.
Ms.A.R. Joshi for BMC.
Mr.K.R. Belosey, Acg.Govt.Pleader for Respondent No.4-State.

CORAM : V.M. KANADE, J.

DATED : JUNE 19, 2007

P.C. :-

1. Heard the learned Counsel for the petitioner and the learned Counsel for the Corporation. Mr.Belosey, learned Acg.Government Pleader appears on behalf of respondent no.4.

2. Rule. Rule made returnable forthwith by consent of the parties. Brief facts which are relevant for the purpose of deciding this petition are as under :-

3. It is the case of the petitioner that he was occupant of Room No.9, Dayabai Jayraj Chawl situated at Sherichi Wadi, Forjett Hill Street, Mumbai-36. The

petitioner was issued Ration Card in the year 1983 and his name is also appeared in the Election Rolls and a permanent card was issued in the name of the petitioner in the year 1989. Similarly, the petitioner was also issued a gas card. The petitioner's name was registered in the register of Gas Consumer. A certificate to that effect was issued in favour of the petitioner.

4. It is the case of the petitioner that he was occupying one of the structures which was standing on the said property prior to 1995 as such he was entitled to get the benefit of the Government Policy for Rehabilitation in the event of demolition and reconstruction of the structures on the said property.

5. The Corporation proposed the scheme to develop the 9 chawl and 16 structures which was standing on the said property known as Sherichi Wadi under Development Control Rule No.33(7). The said property, therefore, was to be developed through a Co-operative Housing Society which was formed by the tenants of the said property. Accordingly, the Housing Society known as Jai

Hari Society was registered and it undertook the proposed redevelopment through their developers and/or builders.

6. Since it was essential to get the property vacated, the tenants of the affected chawls and the structures standing on the said property were shifted to a Municipal Transit Camp situated at Sane Guruji Marg, Tardeo, in order to enable the developer to construct the buildings under the Redevelopment Scheme.

7. Accordingly, by letter dated 20th May, 1997, a Secretary of Jai Hari Society informed the petitioner that a decision was taken to shift the petitioner to Room No.34 of the said transit camp. The petitioner, accordingly, vacated the structure and assurance was given to him that after the redevelopment of the property, he would be accommodated in the said newly constructed building. The grievance of the petitioner is that instead of rehabilitating him, he was served with a notice dated 16th June, 2000 under Section 105B(2) of the Mumbai Municipal Corporation Act and that

an inquiry was conducted by respondent no.3 and he was asked to show cause why he should not be ordered to vacate the transit camp premises. It was stated in the said notice that the petitioner was in unauthorised occupation of the premises. It is the case of the petitioner that he filed his written statement and also the documents which established that he was occupying one of the structures in the said Sherichi Wadi. The Enquiry Officer, however, directed the petitioner to vacate the said premises and held that he had not proved that he was in occupation of one of the structures on the said property. The petitioner preferred an appeal against the said order which came up before the Principal Judge of the Bombay City Civil Court at Bombay. The appeal, however, also was rejected and the order passed by the Enquiry Officer was confirmed.

8. The learned Counsel for the petitioner submitted that the petitioner had produced necessary proof and had established that he was occupying the tenement on the land of the Municipal Corporation before 1st January, 1995 and that all these documents have been ignored by

the lower Appellate Court and the Enquiry officer. The learned Counsel for the petitioner also relied on the judgment of this Court in Writ Petition No.2944/2006 dated 20th December, 2006 and also a judgment in Writ Petition No.2945/2006 of the same date. He submitted that against two other occupants who are similarly situated, same order was passed by the Enquiry Officer which had been confirmed by the City Civil Court and that this Court had set aside the said order and had directed the Assistant Commissioner, Estate Department, to process the case of the said occupants for allotment of alternate accommodation in accordance with law.

9. The learned Counsel for the Corporation, however, submitted that the petitioner was in unauthorised occupation and the petitioner had been given sufficient opportunity and during the enquiry proceedings, the petitioner had been extensively cross-examined by the officers of the respondent, however, he was not in a position to establish that he was occupant of Sherichi Wadi. The learned Counsel submitted that in the written statement which was filed

by the petitioner in the enquiry which was conducted by respondent no.3 clearly indicate that he was not occupying Municipal tenement and occupation of unauthorised structure in the vicinity of Sherichi Wadi compound. She submitted that in fact, the society had asked the petitioner to shift to the transit camp and vacate the tenement. She submitted that this itself indicated that the Corporation had never allotted alternate accommodation to the petitioner.

10. After having perused the documentary evidence on record and the judgments of this Court in the aforementioned writ petitions on which reliance is placed by the learned Counsel appearing on behalf of the petitioner, in my view, the submissions made by the learned Counsel for the Corporation cannot be accepted.

11. It is an admitted position that the Redevelopment Scheme was undertaken pursuant to Development Control Regulation No.33(7). A perusal of the said provision reveals that the redevelopment of a cessed building can be undertaken by a Co-operative

Housing Society of the existing tenants or a society and the landlords and/or of the occupiers in the cessed building in category A which attracts the provisions of MHADA Act, 1976. Therefore, the benefit of the said Regulation has been extended not only to the tenants of the said building but also the occupiers of such structures. It is an admitted position that the petitioner co-operated with the authorities in the development of the said land and was accordingly shifted to the transit accommodation merely because the petitioner had shifted on the basis of the request of the society which was developing the property and not at the instance of the Corporation, would not be of any assistance to the Corporation since the fact remains that the petitioner was an occupant of the structure situated on the said property. The lower Appellate Court as also the Enquiry Officer have both overlooked this aspect of the case and therefore, have committed an error of law which is apparent on the face of record. The impugned order passed by the Principal Judge, City Civil Court and the Enquiry Officer will have to be set aside and the matter, therefore, will have to be

remanded and the authorities will have to consider the matter afresh.

12. The Assistant Commissioner, Estate Department, shall process the case of the petitioner for the allotment of accommodation in the redeveloped property in the Sherichi Wadi in accordance with law. The Assistant Commissioner shall obtain necessary sanction from the Additional Municipal Commissioner. The Additional Municipal Commissioner shall grant sanction to the Assistant Commissioner, as expeditiously as possible and thereafter, the Assistant Municipal Commissioner take a final decision in the matter preferably within a period of three months from the date of certified copy of this order is produced by him.

13. It is also further clarified that in the event, it is not possible to accommodate the petitioner in the redeveloped property or in the vicinity of the said property, it would be open for the Corporation to allot other suitable premises in the vicinity in accordance with law.

14. The petitioner shall not be evicted from the transit camp accommodation as long as the entire exercise as directed by this Court hereinabove is not carried out. Needless to state that the Municipal Corporation is at liberty to take suitable action against the developer and the society if it is found that they have committed breach of the undertaking which is given to the Corporation. This may, however, be done after giving personal hearing to the builder and the society.

. The petition is disposed of in the above terms.

(V.M. KANADE, J.)